

(2008) 01 MAD CK 0054
In the Madras High Court
Case No : H.C.P. No. 1553 of 2007

Sumathi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

Madras Prohibition Act, 1937 — Section 4(1), 4(1A)
Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders,
Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 — Section 3(1)

Citation : (2008) 01 MAD CK 0054

Hon'ble Judges : R. Regupathi, J; P.D. Dinakaran, J

Bench : Division Bench

Advocate : O.S. Thilak Pasumbadiar, for the Appellant; N.R. Elango, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran

1. The order of detention dated 22.10.2007, clamped on the detenu by name Jayaraj by the second respondent in C.O.C. No. 61/2007, branding

him as a Bootlegger u/s 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas,

Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), is being challenged in this

writ petition by the brother of the detenu.

2. The order of detention dated 22.10.2007 came to be passed based on the ground case said to have taken place on 11.10.2007 while the

police party attached to Prohibition Enforcement Wing, Nagapattinam conducted prohibition raid at Perungadambanu of Kilvelue Police Station

limits. During the raid, the detenu was found selling illicit arrack to his customers and on seeing the police party, when the detenu and others

attempted to flee from the scene, the police party apprehended the detenu, but other persons escaped. When smelt, the arrack emanated

poisonous odour resulting in irritation to eyes. The detenu was arrested and he gave voluntary confession statement admitting his guilt. The detenu

and the seized articles were brought to the police station and a case was registered in Nagapattinam Prohibition Enforcement Wing Crime No.

1941 of 2007 for offences under Sections 4(1)(aaa), 4(1)(i) r/w 4(1-A) of the Tamil Nadu Prohibition Act. The detenu was later produced before

the Court for remanding him to judicial custody. The sample of arrack seized was found to contain 4.1% mg.w/v of atropine, which is a poisonous

substance.

3. The detaining authority, taking note of the above ground case as well as six adverse cases of similar nature, viz. in Nagapattinam P.E.W Cr.

Nos. 1126/2006 and 564/2007 and in Kilvelur P.S.Cr. Nos. 130/2007, 95/2007 and 125/2007, and having come to the subjective satisfaction

that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the

maintenance of public order and public health, ordered his detention dubbing him as a Bootlegger.

4. The main contention of the learned Counsel for the petitioner is that the representation dated 29.10.2007 sent by the learned Counsel appearing

on behalf of the detenu to the detaining authority within twelve days from the date of the detention order, viz. 22.10.2007, was neither considered

by the detaining authority nor it was forwarded to the Advisory Board for its consideration before approving the order of detention, which

rendered the impugned order of detention itself illegal.

5. We have perused the materials placed before us. Concededly, a representation dated 29.10.2007 was sent by the learned Counsel for the

petitioner on behalf of the detenu to the detaining authority objecting to the impugned order of detention and the same was also received by the

detaining authority on 2.11.2007. This Court is aghast to note that the detaining authority has failed in his statutory duty of disposing of the said

representation sent on behalf of the detenu within twelve days of the date of

detention order nor it was forwarded to the Advisory Board for its consideration before approving the detention order. When the liberty of a person is curtailed, the detaining authority should be more vigilant in justifying his stand that the presence of the person in society is dangerous. The statute mandates that if the detaining authority receives a representation on behalf of the detenu objecting to his order of detention within twelve days of the date of detention order, the same should either be considered and disposed of by the detaining authority himself or the detaining authority ought to have forwarded the same to the Advisory Board for its consideration. Admittedly, in the case on hand, neither the detaining authority has considered and disposed of the representation dated 29.10.2007 sent on behalf of the detenu within twelve days nor it was forwarded to the Advisory Board. Thus, failure to exercise the jurisdiction vested on the detaining authority has rendered the detention order itself illegal and hence, we are of the opinion that this petition must succeed on this ground.

In the result, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.